

August 27, 2009

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPLICANT: Conner Homes at Barbee Mill LLC
Attn: Gary Upper
846 108th Avenue NE
Bellevue, WA 98004, and

Dinesh Keskar
4107 Williams Avenue N
Renton, WA 98056

CONTACT: David Douglas
Waterfront Construction, Inc.
10315 19th Avenue SE, Ste. 106
Everett, WA 98208

LUA-09-067, SM, SMC, ECF

LOCATION: 4101 & 4107 Williams Avenue N

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the construction of a 80-foot long joint use dock with a boat lift on one side (4107 Williams Ave N) and two mooring pilings or a boat lift on the other side (4101 Williams Ave N) in association with two attached residential units on the shore of Lake Washington..

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on August 4, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the August 11, 2009 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, August 11, 2009, at 9:01 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original	<u>Exhibit No. 2:</u> Neighborhood Detail Map
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application, proof of posting, proof of publication and other documentation pertinent to this request.	
<u>Exhibit No. 3:</u> Vicinity Map and Area Map	<u>Exhibit No. 4:</u> Plot Plan
<u>Exhibit No. 5:</u> Proposed Pier Elevation View	<u>Exhibit No. 6:</u> Planting Plan
<u>Exhibit No. 7:</u> Zoning Map	<u>Exhibit No. 8:</u> ERC Determination
<u>Exhibit No. 9:</u> ERC Mitigation Measures	<u>Exhibit No. 10:</u> Shoreline Substantial Development Permit
<u>Exhibit No. 11:</u> Covenant for the Joos/Conner Joint Use Dock.	

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The project does require a Shoreline Substantial Development Permit for the construction of an 80-foot long joint use dock with boat lift on one side at 4107 Williams Ave N and a pre-manufactured boat lift or two mooring pilings on the south side at 4101 Williams Ave N.

The boat lifts would be pre-manufactured, 10-feet by 10-feet and would sit directly on the lake bottom on four foot pads that are approximately a foot square.

In deciding whether the dock on the south side would contain a boat lift of two pilings, the permit would expire in 2 years with a 1-year extension. This lot is still owned by Mr. Conner and there is no confirmation of what a potential owner might want.

The joint use dock would be constructed on the joint side yard property line between 4101 and 4107 Williams Ave N. The site encompasses a total of 11,864 square feet of upland property. It contains 82 feet of shoreline. All materials, equipment and personnel would be transported to the site by construction barge. Pilings would be six 8-inch steel batters that would support the pier section of the dock. If mooring pilings are used, they would be 10-inch diameter. Both would be installed by barge mounted vibratory pile driver.

The overall site was formerly a lumber mill. The land is in the process of being developed for residential dwellings and in order to restore the former industrial site to a site suitable for residential development all buildings were demolished, fill soils were removed from behind the bulkhead, and all materials associated with a mill operation were removed and shoreline restoration was accomplished.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated with three measures. No appeals were filed.

All construction would take place during the Fish and Wildlife construction period, July 16 through December 31 in this area of the lake.

This project does meet all the requirements of the Shoreline Conditional Use criteria.

The hydraulics used for the boat lifts use fluids that are non-toxic in a water environment and are solar powered.

Gary Upper, Conner Homes at Barbee Mill LLC, 846 108th Avenue NE, Bellevue 98004 stated that he represents both applicants Mr. Keskar, a resident and Conner Homes who owns the adjacent home that is still for sale.

Originally when the preliminary project approval was received, when docks were discussed it was recommended that joint use docks be used if there were going to be docks. It was anticipated at that time that all 28 lots along Lake Washington's frontage would have docks. Since that time the DNR restoration, 14 of the lots resulted in DNR withdrawing the ability of having any docks in that area due to the restoration. They have jurisdiction all the way to the shoreline. They are now only allowed to have docks on the southerly 14 lots, which would mean seven docks. There is one more application scheduled in September which will provide three of the seven docks. They are close to selling a fourth, but lenders believe they will not be doing any more specs on the lake for some time. They would like to have a community dock in the location of the club house, they are working with DNR for an agreement where they will allow the dock for some mitigation work.

Mr. Wasser stated that the last joint use dock project had a restrictive covenant condition imposed and is required by the Shoreline Master Program.

Gary Upper stated that the covenant is designed to lay out the rules between two property owners for maintenance and joint ownership.

Kayren Kittrick, Community and Economic Development stated that the Metro line is nowhere near this project. There are no facilities in the lake at this point. Bringing electric and water to the dock, the water would be subject to cross connection codes and subject to inspection.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:26 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicants, Connor Homes and Dinesh Keskar, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install mooring pilings and/or boat lifts as well as an associated dock in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance- Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site consists of two side-by-side lots located at 4101 and 4107 Williams Avenue North. The lots are located west of Lake Washington Boulevard on the shoreline of Lake Washington.

7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of commercial office or residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned COR (Commercial, Office, and Residential). The area is developed with a variety of residential uses including townhomes and single family homes.
9. The subject site was annexed to the City with the adoption of Ordinance 1800 enacted in October 1959.
10. The two lots are approximately 5,961 and 5,903 square feet or a total of 11,864 square feet but a portion of the property extends out into the lake.
11. Duplex residential townhomes are located on the eastern, uplands portion of the site.
12. The applicants propose erecting a joint use pier and mooring pilings in the lake. There will also be a boat lift or lifts associated with the dock. The pier which is a permitted use for residential uses under the Shoreline Master Program will straddle the lot line as it extends out into the lake. The Shoreline Master Program does not identify mooring pilings or boat lift in its text as a permitted use and, therefore, it must be reviewed under the Shoreline Conditional Use provisions.
13. The pier will be 80 feet long. The 40 feet nearest the shore will be 3 feet 9 inches wide. The remaining 40 feet will be 5 feet 10.5 inches wide. The dock would be supported by six 8-inch diameter steel batter piles. The dock for its entire length will be fully grated to allow light to penetrate under the dock. The light penetration helps to avoid shadows that allow salmon predators to hide. This portion of the proposal does not need a special permit.
14. The applicant proposes installing a boat lift on the north side of the dock and either two (2) mooring pilings or boat lift on the south property. The boat lifts are 10 feet square and rest on four 12-inch square pads set on the lake bottom. The pilings are intended to tie-off boats slightly away from the dock to avoid having boats banging into the dock. These pilings would be 10 inches in diameter and extend to approximately 6 feet above the Ordinary High Water Line. As noted above, mooring pilings are not identified in the text of the Master Program which therefore requires review under the Conditional Use provisions of City and State law.
15. All construction would be accomplished from the lake by barge. The work is expected to take approximately 5 to 7 days. The work would be accomplished with a vibratory pile driver.
16. Code requires a five foot side yard setback from the property line. The proposal meets this requirement.
17. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake. A silt fence will be installed around the work area.
18. The development of the uplands resulted in the planting of native vegetation on the shoreline. The applicant will supplement these planting with additional plantings in association with dock construction.
19. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.

CONCLUSIONS:

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.
- b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:
 - i. The use must be compatible with other permitted uses within that area.
 - ii. The use will not interfere with the public use of public shorelines.
 - iii. Design of the site will be compatible with the surroundings and the City's Master Program.
 - iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
 - v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The area is zoned for a variety of uses including residential uses. It was platted and developed for residential uses. Many residential properties along Renton's Lake Washington shoreline are served by docks and piers. There have been other applications for boat lifts and mooring pilings serving docks in Renton. The pilings and lifts are proposed for the private areas of lake bottom and the adjacent uplands although they are located in the lake. The pilings should be non-intrusive visually, extending approximately 6 feet above the Ordinary High Water Mark and only 10 inches in diameter. The lifts are more obvious. They will not extend beyond the end of the docks so they should not present an unusual obstacle to navigation.
3. The proposed pilings or boat lifts should not interfere with public use of the shoreline, particularly since this is a private shoreline. The dock, the pilings or lifts will serve, will already extend out into the lake and therefore, should not hamper near-shore navigation. This shoreline is privately owned and developed with duplex housing.
4. The pilings and lifts will be setback from property lines more than required by code and will not create any untoward impacts on adjacent uses or on water-oriented uses. The fact that the dock will be shared reduces the number of projections out into the lake so the additional pilings will be less intrusive than a second dock.
5. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. The applicant proposes additional plantings in conjunction with installing the dock. The pilings and lifts will be out in the lake and not affect the actual shoreline, although the dock and pilings will obviously permit and encourage boating on the lake.
6. The lots, as noted, are private and extend out into the lake. The proposed pilings will serve their respective lots. Private uses are permitted in this area of the shoreline. The use is similar to those uses

permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.

7. The pier, pilings and lifts should not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for residential uses and the usual complement of accessory uses. On a lakeshore property, piers docks and similar uses including the proposed pilings would be considered reasonable accessory uses.
8. The proposed pilings and lifts should not create any significant adverse affects on the shoreline environment. The fluids used are non-toxic and in this particular case solar power is being used.
9. The pier, lifts and pilings should not further harm the public interest. Since the applicant left open the issue of whether pilings or a lift would be installed on the south property, there should be a condition imposed to make sure that any delayed work occurs within the "fisheries window" established by the State.
10. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. These will not be the first boat lifts and the pilings are still a relatively new addition to the Renton shoreline. The pilings will be located shoreward of the pier's end. A number of docks already protrude out into the lake from many of the homes along the shore. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much of a significant effect on the lake or shore.
11. Since pilings and lifts are neither permitted nor prohibited outright, they do require review under the Conditional Use criteria. The proposed use is generally consistent with the criteria noted above.
12. Ownership and access and maintenance agreements for this shared use should be executed.

RECOMMENDATION:

The Conditional Use Permit and the Shoreline Substantial Development Permit for the pier and mooring pilings should be approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures imposed by the Environmental Review Committee in its Determination of Non-Significance – Mitigated issued on July 13, 2009.
2. The applicant shall prepare a restrictive covenant with the appropriate signature of the property owners and recorded with King County. The document shall specify ownership rights and maintenance provisions for the dock and mooring pilings. The restrictive covenant shall contain a statement that the covenant shall remain with the property and can only be released by written permission granted by the City of Renton. Building permits for the dock, boat lifts and mooring pilings may be issued only subsequent to recording the restrictive covenant.
3. The applicant shall comply with all construction conditions by the State agencies and all construction conditions provided in the application submitted to the City.
4. The applicant shall secure appropriate permits from the State to assure that all work occurs within the "fisheries window" established by the State.

ORDERED THIS 27th day of August 2009.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 27th day of August 2009 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Marty Wine, Assistant CAO	Transportation Division
Gregg Zimmerman, PBPW Administrator	Utilities Division
Alex Pietsch, Economic Development	Neil Watts, Development Services
Jennifer Henning, Development Services	Janet Conklin, Development Services
Stacy Tucker, Development Services	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., September 10, 2009** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., September 10, 2009.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.